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C O N F I D E N T I A L SECTION 01 OF 02 MANILA 002712

SIPDIS

STATE FOR EAP/PMBS, EB, INR/EAP, INR/B

E.O. 12958: DECL: 06/14/2015

TAGS: [PGOV](#) [PREL](#) [PINR](#) [KCOR](#) [ECON](#) [RP](#)

SUBJECT: SETBACK IN GARCIA GRAFT CASE

REF: A. MANILA 1641

[B](#). 04 MANILA 5262

[C](#). MANILA 2578

Classified By: Economic Officer Daniel Duane for
Reasons 1.4 (b) and (d).

[1](#). (C) Summary: The recent ruling in the corruption trial of former comptroller of the Armed Forces of the Philippines (AFP) General Garcia that his wife cannot be charged as a co-conspirator poses a serious threat to the prosecution's case. Though the prosecutors intend to appeal the ruling, all the way to the Supreme Court if necessary, and remain hopeful that they will ultimately prevail, this latest development represents a setback and could seriously delay, if not prevent, a conviction in what the country's top corruption prosecutor considers a "must-win" case. End Summary.

[2](#). (C) On June 6, Ombudsman Simeon Marcelo told DOJ Attach and Econcouns that a recent court ruling in the trial of General Carlos Garcia, the former AFP comptroller accused of "plunder" (ref A), poses severe challenges to the prosecution's case. The three-judge panel of the Sandiganbayan, the Philippines' anti-graft court, which is hearing the case against Garcia, ruled that Garcia's wife Clarita could not, as the prosecution had requested, be charged as a co-conspirator, but only as an accessory-after-the-fact, and the court on that basis refused to issue an arrest warrant for her as a co-conspirator.

Dearth of Evidence

[3](#). (C) Marcelo explained that, despite all of the evidence gathered to date showing the magnitude of Garcia's unexplained wealth (ref A), the prosecution has had difficulty developing evidence proving Garcia's corrupt acts. Virtually all of the deposits to his accounts were made in cash, eliminating any paper trail. No witnesses have come forward to testify against him. The prosecution has gathered ample evidence that Garcia's unexplained assets are well over the 75 million peso (approximately US\$1.4 million) threshold required to charge him with the capital offense of "plunder." But the only piece of direct evidence the prosecution has been able to develop thus far to prove corrupt acts is the letter from his wife to US authorities, written in an attempt to retrieve the approximately \$100,000 in cash seized by DHS/ICE officials at the San Francisco international airport when his sons failed properly to declare it upon arrival (ref B). In the letter, Mrs. Garcia admitted to the receipt by her husband of large "gratuities" paid to him in his capacity as AFP comptroller to secure lucrative contracts.

[4](#). (C) Under Philippine law, statements made by a co-conspirator, even if hearsay, are admissible. However, if the panel's recent ruling that Mrs. Garcia cannot be charged as a co-conspirator stands, the letter would be inadmissible hearsay.

Judicial Tampering?

[5](#). (C) Marcelo said that the panel clearly erred in ruling that Garcia's wife was not a co-conspirator. Marcelo noted that he himself had received death threats by anonymous callers warning him that if he pursued the case against Garcia's family he would be killed, and implied that one explanation for the court's legal error was that the judges had been intimidated by similar threats.

Ombudsman to Appeal

[6](#). (C) Marcelo said he intended to appeal the panel's ruling. He noted that as a procedural matter he first planned to file with the Sandiganbayan panel, within the week, a motion for reconsideration, which he expected the panel to deny. He would then appeal the ruling to the Supreme Court, which he was confident would overturn the

panel. Though he could not predict how long the appeal process would take, he noted that a similar appeal in another case had taken eight months.

Garcia Refuses to "Sing"

17. (C) Some within the GRP had expressed optimism when Garcia was first arrested that he might, in a bid for leniency, implicate other corrupt GRP officials, but this has not happened. Marcelo explained, by way of analogy, how he had been told by another AFP officer facing corruption charges that, "if I testify against them, they will kill me and my family. If I don't, I may be convicted, but I will not be executed, my family will be safe, and they will even be provided for while I am in prison." Marcelo added that "they" are "like the Mafia."

Comment

18. (C) Failure, and even significant delay, in obtaining a conviction in the high-profile case against General Garcia would represent a major setback for the Arroyo administration in her declared war on corruption. Such a setback would certainly lead to even greater disillusionment among the citizenry, many of whom already doubt the sincerity of her campaign, particularly in the wake of recent allegations of corruption against the first family (ref C). The Ombudsman's suspicions of judicial intimidation, as well as the difficulties in developing evidence posed by the "code of silence," also illustrate the uphill battle faced by prosecutors in the Philippines in obtaining convictions against powerful corrupt officials. The failure of the Ombudsman's prosecutors to obtain independent evidence of how General Garcia was able to plunder is also disappointing, if not surprising. We will continue to support the GRP's efforts to pursue a conviction in the Garcia case.
MUSSOMELI